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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,609	02/04/2004	George T. Bertram	D-20091-03	1063

7590 02/08/2005  
Sealed Air Corporation  
P.O. Box 464  
Duncan, SC 29334

EXAMINER

FOSTER, JIMMY G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/771,609

Applicant(s)

BERTRAM ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6,8,9,15,20,21,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,8,9,15,20,21,23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/4/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

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1) Claims, 6, 8, ,9, 15, 20, 21, 23 and 24 are considered to distinguish over the prior art.

2) The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3) Claims 6, 8, 9, 15, 20, 21, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 4 and 11 of U.S. Patent No 6,712,201 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 4 and 11 of the patent include substantially all of the subject matter set forth in present claims 6 and 15. The patent claims call for a vented bag, a foam precursor packet in the bag, first and second compartments in the packet separated by a frangible seal, a second frangible seal between one of the compartments and the enclosed space in the bag, a first foam precursor component in the first packet compartment, a second foam precursor component in the second compartment of the packet, the foam which will result from the mixing of the components filling the interior space of the bag, peel strengths of one to twelve pounds per inch or less for the

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frangible seals, a band of printing comprising spaced apart printed areas separated by seal lines, and the frangible seals each being formed by a band of printing along contiguous surfaces of the packet which include a pattern of spaced apart printed areas separated by a grid of spaced apart seal lines in orthogonal or non-orthogonal fashion throughout the length of the frangible seals. In addition, claim 14 calls for a band of printing comprising a pattern of printed areas which cover at least about 60% of the surface area of the band.

Regarding instant claims 8 and 9, the grid constitutes a matrix, and therefore would include, as a general condition, so many seal lines per inch. Applicants have not shown criticality with respect to the six lines per inch when compared with other line densities. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Accordingly, to have selected any workable range of the number of seal lines per inch, including that claimed by Applicants, would have been obvious.

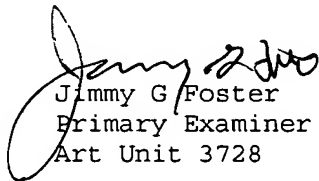
Regarding instant claim 21, patent claim 14 already calls for the general condition of at least 60% coverage of the printed areas on the printing band. However, Applicant's have not shown criticality for the at least 80% coverage claimed in claim 21, as opposed to any other ranges of values. Inasmuch as where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, it would have been obvious to have selected any workable range for the printed coverage, including that claimed by Applicants.

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4) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF  
4 February 2005